IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 717 OF 1999

IN

SUMM.SUIT NO.475 OF 1999

M/s Videocon Leasing & Indl.Fin Ltd. . Plaintiff

versus

Sri Sharada Parameshwari Textiles Ltd & ors

.. Defts

Mr.R.D.Soni i/b Ram & Co for Plaintiff.

Mr.N.M.Shah with Mr.Satish Shetye for Deft no.1

Mr.Bagla for Deft nos. 2 and 3.

CORAM : D.G. KARNIK, J

DATED : 14th March 2005.

P.C:-

1. The defendant no.1 is a company and the defendant nos. 2 and 3 are the guarantors who have guaranteed the due repayment of the amounts by the defendant no.1 company. Hence, all the defendants are sued in this suit.

2. Under a Memorandum of Understanding dated 1st August, 2994 the plaintiff inter alia agreed to purchase the debentures to be issued by the defendant no.1 company. The plaintiff also agreed to advance certain money to the defendant company by way of lease finance. However, I am not concerned with the lease finance and concerned only with the amounts given by the plaintiff to the defendant no. 1 company for issuance of the debentures.

3. The plaintiff agreed to purchase from the defendant no.1 company debentures worth Rs.4 crores agreeing to repay the amount by the end of 7th,8th and 9th year. In pursuance of the said memorandum the plaintiff paid to the defendant no.1 in all Rs.3.54 crores. However, the defendant no.1 company did not issue the debentures. The plaintiff therefore by advocate’s notice dated 1st January, 1999 demanded the repayment from the defendants. As the defendants failed and neglected to make the payment, the plaintiff has filed this suit.

4. The defendant nos. 2 and 3 who are the directors of the defendant no.1 company had offered to be the guarantors for the due repayment of the money.

Accordingly, the defendant nos. 2 and 3 executed a deed of guarantee copy of which is annexed as Exhibit B to the plaint. As the defendant nos. 2 and 3 failed and neglected to discharge their oblgigation under the guarantee, the plaintiff has claimed the said money from the defendant nos. 2 and 3 also.

5. The defendant no.1 became sick and was referred to the B.I.F.R. I am informed at the bar that the B.I.F.R. has recommended winding up of the defendant company and has not sanctioned any scheme for rehabilitation. As no proceedings are presently pending before the B.I.F.R. there is no bar for hearing of the Summons for Judgment.

6. Learned counsel for the defendant nos. 1 to 3 raised three principal defences namely of limitation, lack of juirisdiction and non receipt of money by the defendant no.1. I would consider each of the defences hereinbelow:

7. It is firstly contended that the suit is barred by limitation as the money was advanced in pursuance of the MOU dated 22nd November, 1994 and suit has been filed on 11th January, 1999. It may be noted that the

MOU contemplated that the defendant no.1 would issue debentures payable at the end of 7th, 8th and 9th year. Accordingly, money was paid by the plaintiff to the defendants for subscription to the said debentures. The defendant no.1 did not issue the debentures and thus committed breach of the contract. By advocate's notice dated 1st January, 1999 the plaintiff demanded the payment. Thus, cause of action has arisen for recovery of the money on failure of the defendants to issue debentures or to repay the money in pursuance of the notice dated 1st January, 1999 and not earlier. Therefore, the defence that the suit is barred by limitation has no substance.

8. It is secondly contended that the defendant no.1 company has its registered office at Coimbatore, and therefore, this Court has no jurisdiction to try and entertain the suit. Part of the money was payable at Mumbai. Money was paid partly by demand draft and partly by cheque which was drawn on a bank payable at Mumbai and the defendant no.1 realised the money at Mumbai. Thus, part of the cause of action arose at Mumbai. The plaintiff has obtained leave of this Court under clause 12 of the Letters Patent. No application for revocation of the leave has been filed

by the defendants. In the circumstances, the defence that this Court has no jurisdiction to entertain and try this suit is also not maintainable.

9. It was lastly contended that the defendant no.1 has not received the money at all. By filing the affidavit in rejoinder the plaintiff has produced the proof of advancing the money. The plaintiff had purchased the demand drafts from the State Bank of India worth Rs.1,50,00,000/-. Original letter of the State Bank of India regarding the issuance of the demand draft and certificate is produced by the plaintiff as Exhibit 1 and 2 to the affidavit in rejoinder. Besides by the letter dated 23rd December, 1994 the defendant has admitted having received Rs.3.1 crores towards the debentures. Thus, even the defendant no.1 has admitted receipt of the sum of Rs.3.1 crores till 23rd December, 1994. Thereafter the plaintiff issued a cheque for Rs.65,00,000/- on 28th April, 1995. Out of the said cheque a sum of Rs.40,00,000/- was towards the subscription for debentures. Thus, the plaintiff in all paid to the defendant no.1 a sum of Rs.3.5 crores. Even the defendants has admitted receipt of Rs.3.1 crores and there is further proof regarding the payment of

further sum of Rs.45,00,000/-. Assuming that further payment of Rs.45,00,000/- would be required to be proved at trial, in view of the admission by the defendant of having received Rs.3.1 crores, leave if any, to be granted to the defendant no.1 would have to be conditional subject to depositing of Rs.3.1 crores.

10. Learned counsel for the defendant nos. 2 and 3 contend by way of an additional defence that the suit against them is barred by limitation. Under the deed of guarantee, liability of the defendant nos. 2 and 3 arose after demand. Admittedly demand was made for the first time on the defendant nos.2 and 3 on 11th January, 1999 and hence the suit filed on 11th January, 1999 is within the period of limitation. Thus, none of the defences so far as the the principal sum is concerned raises any triable issues. As regards the interest the defendants may have a defence and therefore unconditional leave regarding payment of interest would be granted to them.

11. As regards claim for principal sum of Rs.3.65 crores, the defendants are granted conditional leave to defend the suit to the extent of Rs.3,10,00,000/- (Rupees Three crores and ten lacs only) subject to

their depositing in Court a sum of Rs.3.1 crores within a period of four weeks. As regards the balance claim for the principal sum of Rs.45,00,000/- the defendants are granted unconditonal leave to defend the suit. The defendants are also further granted unconditional leave to defend the claim for interest. On deposit of the sum of Rs. 3,10,00,000/- (Rupees Three crores and Ten lacs only) suit shall stand transferred to the list of commercial causes. On failure of the defendants, the plaintiff shall have the liberty to apply for decree to the extent of Rs.3.1 crores only.

D.G.KARNIK, J